IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.52 OF 2003

IN

SUMMARY SUIT NO.1970 OF 2002

Nallani C.Mohandas, Prop. .. Plaintiff
of Mithcon Engineering.

versus

N.S.Guzder & Co Ltd .. Defendant

...

Mr. B.Saraf i/b A.Mehta Laljee & Co for Plaintiff
Mr.C.D'Souza i/b Mahimtura & Co Defendant.

..

CORAM : D.G. KARNIK, J

DATED : 19th January 2005.

P.C:-

1. Heard learned counsel for the parties.

2. The plaintiff has filed this suit for recovery of the amount of the bills due from the defendant company towards the work done for it. Previously the

plaintiff had filed a winding up petition bearing Company Petition No. 855 of 2001 in this Court. In its order dated 16th March 2002 passed in the said Company Petition this Court observed :

> " Learned counsel appearing for both the sides are agreed that the maximum amount that was payable according to the contract between the parties by the respondent-company to the petitioner was Rs.2,50,000/-. It is also admitted position that an amount of Rs.1,63,350/- has actually been paid by the respondent-company to the petitioner. So far as the balance amount of Rs.90,000/- is concerned, the respondent-company is disputing its liability to pay the amount for various reasons. Learned counsel for the respondent-company makes a statement that the respondent-company is willing to deposit this amount in this court."

3. Thus, in the said Company Petition counsel for the petitioner agreed that the maximum liability under the contract was Rs.2,50,000/- out of which Rs.1,63,350/- was paid. In accordance with the order passed in the said Company Petition the defendants also has deposited a further sum of Rs.90,000/- in this Court. Thus a sum of over Rs.2,50,000/- has already been paid or deposited. The defendant disputes the liability for payment of the balance sum. Taking into consideration all the facts and taking into consideration the statement made by the learned counsel for the plaintiff herein (petitioner in

Company Petition) that the maximum liability of the defendant was Rs.2,50,000/- it can be said that the defendant has a triable defence in respect of the balance claim. Hence, the defendant would have to be granted unconditional leave to defend the suit. Accordingly, the defendant is granted unconditional leave to defend the suit. The defendant to file the written statement within a period of five weeks. Suit shall stand transferred to the list of commercial causes.

D.G.KARNIK, J